

**Newton Planning Board
May 18, 2011**

The regular meeting of the Newton Planning Board was called to order at 7:00 PM on Wednesday, May 18, 2011 by Chairwoman McCabe.

OPEN PUBLIC MEETINGS ACT - FLAG SALUTE - ROLL CALL – RULES

PRESENT MEMBERS:

Mr. Russo
Mr. Flaherty
Mr. Flynn
Mr. Marion
Mr. Tharp
Mr. Caffrey (Alt. 1)
Mr. Hardmeyer (Alt. 2)
Mr. Torre (Alt. 3)
Mrs. Mattingly (Alt. 4)
Mrs. McCabe

BOARD SECRETARY:

Kathy Citterbart

EXCUSED:

Mrs. Becker
Mrs. Le Frois
Mr. Le Frois

PRESENT PROFESSIONALS: Mr. David Soloway, Esq., from the firm Vogel, Chait, Collins and Schneider and David Simmons from the firm Harold E. Pellow & Associates.

CONSIDERATION OF MINUTES

April 20, 2011

Mr. Marion made a motion to approve the minutes from April 20, 2011 meeting. Mr. Flaherty seconded the motion.

AYE: Mr. Flaherty, Mr. Marion, Mr. Russo, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, and Mrs. McCabe

HISTORIC RESOLUTIONS:

HPC 09-2011 Balic Winery, Block 717.01, Lot 13 – 207 Spring Street – Recommendation to approve new 42" length x 30" height sign with scroll hanging bracket.

Mr. Flaherty made a motion to approve the resolution. Mr. Marion seconded the motion.

AYE: Mr. Russo, Mr. Flaherty, Mr. Marion, Mr. Flynn, Mr. Caffrey, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, Mrs. McCabe

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RESOLUTIONS:

PBMS-03-2011 Town of Newton – Block 1301, Lot 1.02 – 278 Spring Street – Granted Minor Subdivision.

Mr. Marion made a motion to approve the resolution. Mr. Caffrey seconded the motion.

AYE: Mr. Flaherty, Mr. Marion, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, Mrs. McCabe

OLD BUSINESS

None

NEW BUSINESS

PBV- 05-2011 – Alex Cable – Block 704, Lots 15 & 16 – Maple Avenue – Applicant requesting "c" & "d" variances for demolition of existing house on Lot 16 down to the foundation. Remove existing detached garages from both Lots 15 & 16. Combine Lots 15 & 16 into a single lot. Construct a new home and garage, partially over existing foundation and partially over a new foundation. Remove existing pool and patios and grade area for future new pool and backyard landscape. Remove existing driveway on Lot 16 and use the existing common driveway shared between Lots 14 & 15.

Megan A. Ward, Esq. of Kelly & Ward, LLC represented applicant.

Ms. Ward stated: We are here tonight to request to combine the two lots and that would mean that the undersize lot, Lot 15, would no longer be a non conforming lot and when you combined it with existing of almost 14,000 sq. feet of Lot 16 you come just shy of 22,000 sq feet for total lot area. We are also requesting 2 variances. The first is a rear yard setback variance. In the zone the requirement is 30 feet. The second variance is for Floor Area Ratio. Currently Lot 16 is at 28% and we had put on the plan 29% but in checking the map it appears that it is actually 30% that is being requested. The other issue that will be discussed is an existing common driveway. There is a Deed of Record for the driveway and we are proposing to continue to have a common driveway with adjacent Lot 14.

SWORN: Frank M. Warr, Principal, HQW Architects, Newton, New Jersey and Jason Dunn, PP,LLA with Dykstra Associates, Newton, New Jersey.

Each stated their qualifications and they were accepted as expert witnesses.

Ms. Ward referred to **Exhibit A-1, colorized version of the variance plan that has been submitted to the Board dated with a revision date of May 5, 2011.** Ms. Ward asked Mr. Dunn to explain what the existing conditions on the property are now.

Mr. Dunn reviewed Exhibit A-1.

Mr. Dunn reviewed **Exhibit A-2, Photo Exhibit (Photo A and B) of the properties in question.**

Ms. Ward asked: Do these photos accurately depict the current conditions to the best of your knowledge and how recently did you take the photos?

Mr. Dunn stated: They were taken two weeks ago and the only difference is they are dry.

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Mr. Dunn described all the Photos A - J.

Mr. Warr reviewed **Exhibit A-3, photo of existing residence** and gave a description of the character of the house. **Exhibit A-4 is an aerial of property** and properties within 200 feet. It describes in detail the post and pre development of the site as it relates to the site specifically.

Ms. Ward asked: What does the yellow line represent?

Mr. Warr stated: The yellow line represents the 200 foot radius of the property.

Mr. Warr reviewed drawing **Exhibit A-5**, a colorized version of A-1, Floor Plans Elevations.

Ms. Ward asked Mr. Dunn to provide some more testimony for the combined lots.

Mr. Dunn reviewed the colorized A-1 exhibit. He talked about what is needed in order to mitigate the new garage because the garage is set at the same level as the house.

Ms. Ward asked about the proposed landscaping with regards to the driveway.

Mr. Dunn pointed out where the proposed landscaping will go.

Ms. Ward asked: Can you go over the notes you have on landscaping?

Mr. Dunn stated: A concern that came up as a result of the TRC meeting was about the removal of the trees. Originally, we were going to remove everything on the property and start new. We took another look at the character of the neighborhood and after looking at the property again, I discovered some mature trees that will not be removed. We are removing five mature deciduous trees, one evergreen tree and two ornamental flowering trees and several shrubs. What we are doing to mitigate is proposing some landscaping that would give at least 5 shade trees, 8 evergreen trees and 10 ornamental trees and nearly 100 shrubs.

Ms. Ward asked: Please explain your findings on the floor area ratio that exists in this neighborhood.

Mr. Dunn explained the comparison chart he did on his findings on the floor area ratio that exist in the neighborhood.

Mr. Dunn stated: We did a study that took the land area off of the tax parcel data and also the total floor ratio based on aerial photos to do get the ground area and a field study to see which ones were second story and as it turned out they are all second story and some even turned out to be third story. This chart does not reflect the third story.

Mr. Dunn stated: The definition of Floor Area Ratio for the Town of Newton is the same as the Municipal Land Use Law in that every part of the structure whether it is a garage or any living area including hallways, closets, etc. everything is counted. Pavements are not counted it has to be habitable or able to be occupied.

Mr. Dunn stated: The average Floor Area Ratio in the neighborhood is 0.357 and what we are asking to grant relief on is 0.3 which is far below.

Mr. Dunn marked **Exhibit A-6, a map of the 200 foot area.**

Mr. Dunn continued with his information on the FAR.

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Ms. Ward stated: According to Mr. Simmons' May 12, 2011 letter item 3 on Page 2, there seems to be a difference between what was shown on the variance plan and the architectural drawing. Can you or Mr. Warr explain the difference?

Mr. Warr referred to Exhibit A-5 and explained the difference.

Ms. Ward asked: Mr. Dunn, what is on the variance plan is the actual footprint of the first floor?

Mr. Dunn stated: Yes and the bump out was considered in our FAR.

Ms. Ward asked: Can you explain the difference between the numbers in terms of the FAR where it was originally calculated at 29 and then when you redid it it was at 30.

Mr. Dunn stated: The way we calculated it was interior walls and what is shown on Mr. Warr's plan is to the exterior walls so there was a 1.01 discrepancy.

Ms. Ward stated: So using the gross FAR leading to the outer walls it is 30%?

Mr. Dunn stated: Correct. So we would like to modify and are asking for a "d" variance.

Ms. Ward asked if Item 3 b of Mr. Simmons' letter is acceptable.

Mr. Dunn stated: Yes.

Ms. Ward stated: I did prepare the easement and maintenance agreement between the owners of Lots 14 and Lot 15. I will need to revise it because I had it 6 ft. on their property and 12 ft. and it will remain 5 ft. on Lot 14 and 13 ft. We did not yet attach the Mets & Bounds description because we did prepare it in the event there was a change and there was a change.

Mr. Soloway stated: If you approve the application, we can put that as a condition.

Ms. Ward stated: We feel that is an appropriate condition. As to item 3d, I did provide a signed sealed survey by Robert L. Campbell Associates to Mr. Simmons and one to Mrs. Citterbart.

Ms. Ward asked: With regards to item 3e, whatever needs to be abandoned will be done in accordance within the requirements.

Mr. Dunn stated: We will coordinate that with the public works department.

Ms. Ward stated: With regard to a construction detail for the proposed reinforced concrete sidewalk and concrete apron, how do you propose to address that?

Mr. Dunn stated: I would like to consult with the Board's engineer to find out what the standard is for sidewalks and then we will comply with that standards.

Ms. Ward asked Mr. Dunn to provide the Board with a conclusion of his testimony as a planner with regards to the two variances that you are requesting.

Mr. Dunn stated: Upon reviewing the Municipal Law Use goals I find that this project we are proposing does promote the general welfare, it promotes a desirable visual environment through a plan design and it promotes a establishment of appropriate densities by removing a nonconforming small lot and making it larger and putting a building on the two lots which the

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neighborhood can handle. By honoring the deviation for the rear yard setback, we are improving the functionality of the cars utilizing the garage and not having any detriment to the zone plan. The positive criteria is met for the FAR but the burden of proof is a little different because it is not a prohibitive use it is simply more of an intensity of the footprint on the site which I have analyzed and it is in my opinion that the site can accommodate the increase of the FAR especially because the existing neighborhood is matching or above what we are proposing. On the negative criteria, we understand that the building is larger than the one that exist on Lot 16 but we feel it is mitigated by proposing landscaping, lowering the grade in the rear yard and blocking from view from neighbors in key places with landscaping and buffering and also adding the fence. I will conclude that this does not damage the character of the neighborhood and I hope the Board will consider approval for these variances. It is still the same use; it is still a single residence and not intensifying it to the point where the neighborhood could not accommodate it.

Chairwoman McCabe: Just one comment that it is Maple Avenue not Maple Street.

Mr. Dunn stated: Thank you.

Chairwoman McCabe: In excavating the backyard will you be installing a retaining wall?

Mr. Dunn stated: Not for this phase and not for this approval. We would like to get this portion done and in the future if Mr. Cable would like to do walls, we would have to go through the zoning department.

Mr. Soloway stated: So this application does not include a pool or a patio.

Mr. Dunn stated: Right. The reason is because that design is in flux right now.

Mr. Flynn asked: Are you proposing any drain improvements because I noticed you raised the attached garage about a foot and half from what it was previously on Lot 15 and the affect it will have on the adjacent garage on Lot 14 because that is coming up in elevation a foot and a half and you are making the pavement a lot wider in front of the new garage. There is not a finished floor elevation so I can't determine if the water will be a problem.

Ms Ward stated: The common driveway access and maintenance agreement provides for necessary drainage facilities and that they be constructed by Mr. Cable and be maintained by the prospective property owners. What we can do is review it and whatever drainage work might be necessary in conjunction with the common driveway access and maintenance agreement and as long as Mr. Simmons approves of what we propose and we will construct it.

Mr. Flynn asked: If you were to install a trench drain or some sort to intercept the water flowing towards the garage, it would need to be depicted on the plan as to where it would connect to.

Mr. Dunn stated: We did analyze how the grading would impact the neighboring lots. I do agree with Ms. Ward that we take a closer look but I do feel that it won't be necessary to do any major drainage structures because we can do the grading to redirect the water.
Discussion ensued on the grading.

Mr. Simmons requested if it was agreeable to provide some additional spot elevations so we can verify that drainage?

Mr. Dunn stated: yes.

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Mr. Flynn asked: Are you proposing to do any liter drainage or some type dry well system?

Mr. Dunn stated: No, there really wasn't a need to do mitigation for the storm water because the impervious surfaces were about the same and we are not changing anything that would trigger a major project that would require that.

Mr. Flynn stated: You are improving it so much and it doesn't make sense to not have any gutters.

Mr. Dunn stated: To satisfy your question what we can do is see where the liter drains are going today and see what the best solution would be. Maybe we can tie into the street drainage or underground.

Mr. Tharp stated: There seems to be a difference between the south elevation and the west elevation windows.

Mr. Warr gave an explanation of windows.

Discussion ensued on the windows.

Mr. Soloway asked: Will the windows facing Maple Avenue have dividers of the same manner as the ones depicted on the East elevation?

Mr. Warr stated: Correct.

Mr. Hardmeyer asked: Can you explain what walls are staying and which one are going away?

Mr. Warr gave an explanation.

Mr. Marion asked: Is the proposed house going to have an unfinished/finished basement?

Mr. Warr stated: Under the main existing house there is a full basement. Beneath the recreation room there is a crawl space and under our new addition there will be a full basement. The garage will be slab on graded.

Mr. Marion asked: Does the basement get counted in the FAR?

Mr. Warr stated: I don't believe so.

Mr. Dunn stated: No.

Mr. Marion asked: But it could be finished off one day?

Mr. Dunn stated: If it did, we would have to come back for additional relief.

Mr. Soloway asked: Is it your position Mr. Dunn that if it is a finished basement, it would count towards the FAR.

Mr. Dunn stated: Yes.

Mr. Simmons stated: I did receive a copy of the property survey prepared by Robert I. Campbell Associates and I did notice on it that it appeared on the rear property line there was a small

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gore area. I would like the applicant to verify that everything they have proposed now does not include the gore area between the adjacent properties.

Mr. Dunn stated: We will look at that.

Mr. Soloway stated: Could you please explain what you are calling the breezeway?

Mr. Warr described the breezeway. The breezeway we are referring to is this portion of the structure here (showing the Board the picture). There is no structure on the first floor and it is represented on the east elevation. It opens the backyard to the parking area and it also separates the garage from the main portion of the house but it is covered so it is a covered access into the main portion of the house. Above the breezeway is a small connecting link which attached the master bedroom to the studio/exercise room above the garage.

Mr. Soloway stated: The first floor will be a closed in breezeway and the second floor really is not a breezeway. Is it part of the actual structure?

Mr. Warr stated: Correct.

Mr. Warr stated: It is not enclosed. It is surrounded by columns. It is an open porch.

Mr. Soloway stated: It has a roof but no walls.

Mr. Warr stated: Correct.

Mr. Soloway asked: The second floor is included in the FAR?

Mr. Warr stated: Yes.

Chairwoman McCabe opened this portion of the meeting up to the public. With no public coming forward, Mrs. McCabe closed the public portion of the meeting.

Mr. Soloway described the "c" and "d" variances. He stated: The negative criteria is the same but on your typical d variance, the positive criteria for a d variance is a much tougher burden than a c variance. However, because this is a floor area rather than a use variance, it becomes a lesser of a burden. Mr. Dunn hit on the correct standard during his testimony and what the applicant has to demonstrate under the positive criteria for the d variance is that the property can accommodate any problems that might be caused by the violation of the FAR standard. And for the c variance the benefits outweigh the detriments.

Mr. Tharp made a motion to approve the application as presented. Mr. Marion seconded the motion.

AYE: Mr. Russo, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Flynn, Mr. Caffrey, Mrs. McCabe

PBV-06-11- John Daly – Block 802, Lot 3.02 – 57 Trinity Street – Applicant requesting use variance to convert portion of building for retail paint business.

Mrs. McCabe recused herself as she had a conflict.

Mr. Marion took over meeting for Mrs. McCabe.

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Angela Paternostro-Pfister, Esq. with the firm Morris, Downing & Sherred, LLP represented the applicant.

Ms. Paternostro-Pfister stated: The subject property is currently zoned C-1 Professional and Office District, and retail uses are not a permitted use. Therefore, the applicant is requesting a Use Variance for the proposed paint store.

SWORN: Wayne Thomas McCabe, Licensed Planner, Wayne T. McCabe Associates, Inc., 83 Main Street, Newton, New Jersey and John Daly, 8 High View, Fredon, New Jersey, 07860.

The Board accepts Mr. McCabe's qualifications.

Ms. Pfister asked Mr. McCabe to state the proposal.

Mr. McCabe gave an overview of the proposal for the use. **Exhibits A-1, A-2 and A-3 all dated May 18, 2011** were presented. He stated: The location is currently being used for two services, a dance studio and a printing shop. We want to relocate the Paint Spot, which is a commercial retail establishment, from its current location on Newton Sparta Road to the proposed location. We are looking to install, a commercial retail est. on the 1st floor and the storage for the paint will be on the lower level in the basement. The deliveries will come in from Union Place twice a week (Wednesdays and Fridays) and park on the west side of Union Place to unload into the basement level. Currently there are two parking spaces for the dance studio and two for the print shop. There is an easement that passes over the applicant's property providing access to the parking area in back of the one story building that is adjacent to it, which is the Town's Board of Education facility and they park their staff cars back there. The applicant is looking to provide additional parking for the site by buying two annual parking passes for the eastern parking lot up at the corner of Spring Street and Union Place so his staff can park there. There is parking in front of the store for the customers.

Mr. McCabe continued: The subject property at 57 Trinity Street is located in the C-1 Professional and Office District zone. There are various permitted uses, conditional uses, etc. The size of building there now will not fit anything but a small office. The different types of conditional uses are geared toward older homes in town, etc. Given the current zoning we have a limited amount of permitted uses that would be viable. When you look at the Municipal Master Plan, not until August of 2008 that we had a new master plan done that provided a great deal of insight into the direction that we wanted to take the town in terms of land use. Based on the master plan, we have a new way of planning based on tiers and special use group areas.

Mr. McCabe explained the different tiers. He continued by saying that the master plan has identified the property in question as being an area that is ideal for use for commercial retail establishments, which is what is being proposed. What we are facing now is the Town is going through their final draft of the new zoning ordinance. I am suggesting to you that the Master Plan is totally supportive of what we are looking to do in terms of commercial retail. The ordinances as they are now are in the process of being rewritten and while they are not supportive of us I would suggest to the new that in a short period of time the new ordinances will be. And because of that I suggest to the Board there will be no detriment to the intent of the zone plan or the zone ordinance. With that we will be able to prove that we are in compliance. Another issue we have to address is any special reasons why we should be permitted to have this use. If you look at the Municipal Land Use Laws under the section of What Are the Precepts of Planning in the State. The two that I would look at would be the first one to encourage municipal action to guide the appropriate use or development for the land in the state also meaning at the local level and the matter that will promote the public health, safety, welfare

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and morals. The Master Plan that we adopted two years ago is supports the type of use we are looking to have in this facility. The second one I would look at would be to provide sufficient space for appropriate locations for a variety of uses and this is something that the Planning Board has now done through the adoption of new Master Plan of 2008. Based at what the Land Use Law states we have shown that we are in compliance with the intent of Municipal Land Use Law.

Mr. McCabe stated: In summary, in terms of positive criteria outweighing the negative is simply that the building currently has two uses in it now and the spot that we are looking to fill with a commercial retail establishment has sat empty. By permitting the applicant to use this area for the use that is being requested that it will be putting the building back into its full utilization. I would also like to mention that the proposed use is one that is not very intense in terms of traffic, it is not one that would create a congestive one in the neighborhood, it is one that the Master Plan has approved and encourages and ultimately in my professional opinion our ordinances will follow suit with the Master Plan reflecting the recommendations of the plan and also contain a section for the T-5 area that will address as a principal permitted use commercial retail establishments. Based on this it is my opinion that the Board can grant the use variance being sought and with the condition of having the applicant acquire two annual parking passes/permits from the Town for passing in the east end of Spring Street parking area.

Ms. Pfister asked: Can you briefly discuss the issues that were raised about the sidewalks?

Mr. McCabe stated: There was an issue with the sidewalk on whether it needed to be improved or repaired. There is a slight heave in one or two of the sections of the sidewalk. In reviewing the ordinance I did not find where it is the burden of the applicant's to undertake the repair but if there was a request to change the sidewalk that the owner of the property would have to seek out approval for that kind of an improvement from the municipal governing body which would have the regulatory authority over it.

Mr. Tharp asked: Are we talking about the entire building including the BOE?

Mr. McCabe stated: No. Where they join is the parting line.

Mr. Tharp asked: Could you possibility knock down the wall so the dance studio could be bigger?

Mr. Daley stated: The dance studio portion of the building was a separate entity and the BOE was a separate building. Somewhere along the line they connected the two buildings so it is a low bearing support wall. It was an alley way that was enclosed in.

Mr. Flaherty asked: Can you tell me about the street parking on Union?

Mr. Daley stated: Union has street parking on the west side to the end of the cul-de-sac and has 2 hour parking.

Mr. Simmons stated: The only additional item I would need clarification on is the rear of the building if they have plans to do any painting or sprucing up of that area.

Mr. McCabe stated: The applicant will talk about that.

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Mr. Soloway asked: Your testimony is that you assume the zoning ordinance will be amended because it is entirely consistent with the Master Plan therefore it is consistent with the zoning ordinance.

Mr. McCabe stated: The zoning ordinance is currently out of sync with the new Master Plan. We know that the new one is being drafted.

Mr. Soloway asked: What if it is not adopted? Can you address this application in the context of the negative criteria based upon the existing ordinance?

Mr. McCabe stated: Let's assume the new ordinance is not adopted. The type of uses permitted right now by the C-1 zone is incredibly restrictive based upon the type of uses and area we are talking about in the building. It would be a hardship on him to put the building back into full use. The hardship is one that needs to be considered when you make your final judgment. While the ordinance right now does not support the type of use, the building itself is not conducive to the use's that are permitted.

Mr. Soloway asked: Can you describe the use as it relates to intensity.

Mr. McCabe stated: This would not be an intense use in terms of the demand of on-street parking, it would not be an intense use in terms of adding traffic to Trinity street and my position would be that the type of use being proposed is actually far less intense than anything that is allowed in the ordinance with the exception of a professional office for a one man shop.

Mr. Russo asked: Is there any concern with customers parking on Union Place which is a residential street.

Mr. McCabe stated: Mostly like they would park closer to the intersection of Union and Trinity because they will be coming to the front of the building and not the back. They will not be parking all the way down on Union. I really do not see that as being a problem area.

Mr. Flaherty asked: Would you say the intensity of use of the store is the same as the print shop and probably less than the dance studio is?

Mr. McCabe stated: Less than the dance studio because the parents drop off the students, the students have their lesson and then pick them up similarly to St. Joseph's school. The print shop is a one-man shop and from what I understand there are not a lot of customers coming in and out. There is almost no impact except for the one person who parks there.

Mr. Flaherty stated: So it falls somewhere in between the two uses that are there now.

Mr. Tharp asked: Will you sell wallpaper?

Mr. Daley stated: Just paint.

Mr. Marion opened this portion of the meeting up to the public. With no one stepping forward, the public portion of the meeting is closed.

Ms. Pfister started her questioning of Mr. Daley.

Ms. Pfister asked: How long have you owned the property?

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Mr. Daley stated: About 11 years.

Ms. Pfister asked: Can you explain the current use of the structure as it stands today.

Mr. Daley stated: The current use today is the print shop is in the basement and access is to the rear of the building and we are open five days a week from 9 to 3. On the main level is the Dance Studio which has been there since I bought the building in 1999. They are opened Monday, Tuesday, Wednesday, Thursday from 3 PM to 9:00 PM and closed Fridays. They are open on Saturdays and they have morning classes from 9 to 2. They close for the summer when school gets out and reopens in September when school is back in session. The Board of Education is there Monday – Friday from 7:30 AM to 4 PM.

Ms. Pfister asked: The part where you are proposing to put the paint store, can you describe if that has been occupied or not occupied.

Mr. Daley stated: It was occupied when we bought it. It has been vacant for three years. Nothing fits the permitted uses.

Ms. Pfister asked: It is your intention to move your current business to this location. Do you own and operate that business?

Mr. Daley stated: Yes. I have owned it since 2000.

Ms. Pfister asked: Are you familiar with the day in and day out operations of the business?

Mr. Daley stated: Yes. I work there.

Ms. Pfister asked: Can you tell us how many customers you get in a day.

Mr. Daley stated: There are about 10-12 purchasing customers and there are more that come in and look. These are numbers of today.

Ms. Pfister asked: Would you say that a majority of your business is contractors?

Mr. Daley stated: Yes. They come in the morning.

Ms. Pfister asked: What are you hours of operation going to be.

Mr. Daley stated: 7:30 AM till 6:00 PM, Monday to Friday, Sat 8:30 AM to 5:30 PM, Sun 10:00 AM to 3:00 PM.

Ms. Pfister asked: During your business hours what are the maximum number of employees you will have.

Mr. Daley stated: One.

Ms. Pfister asked: How many deliveries do you get and how often are they made?

Mr. Daley stated: Deliveries are made Wednesdays and Fridays from Benjamin Moore. It is a box truck. They come after 3 PM up till 6 PM. The other supplies come on an as needed basis and it could be every two weeks.

Ms. Pfister asked: Please describe the types of paints you sell.

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Mr. Daley stated: We had a discussion with Mr. Inga about a fire suppression system. Mr. Utter explained to me that if we were storing in the basement paint, paint thinners, spray cans that would need to be in explosion proof containers. We don't have extra stock. What we have is on the shelves. Benjamin Moore is the only company that is not involved in the law suit involving lead. All of their new products are low VOC to no VOC. They have transformed their entire platform.

Ms. Pfister asked: Please describe the two annual parking passes.

Mr. Daley stated: I thought that would be the easiest solution.

Ms. Pfister asked: The delivers that we have been referencing will be coming into the lower basement level off Union.

Mr. Daley stated: Yes. This new store is smaller than the current store. People don't really shop paint. They ask us what for what they want. There is no need to showcase or have aisles of paint.

Ms. Pfister asked: Are you going to be making any changes to the structure of the building?

Mr. Daley stated: It is a paint store so it has to look nice. The entire building needs to be painted.

Mr. Tharp asked: Will there be any other windows?

Mr. Daley stated: I spoke with Chip from Sasse Glass and I got a quote from him for a glass door and the encasement windows will be the same size as the one for the dance studio. They do not go as deep.

Mr. Tharp stated: I would recommend some cosmetic changes be done to the rear and the side of the exterior building.

Mr. Daley stated: Chip gave me a quote.

Mr. Tharp asked Mr. Simmons or Mr. Soloway: Do we require some written approval from either Mr. Utter or Mr. Inga. The applicant testified that he spoke with them but do we need something in writing?

Mr. Soloway stated: If he does any work, he will need a building permit.

Mr. Simmons stated: During the TRC meeting, I was the one that brought up the fire suppression system. The main reason I brought it up was for safety but the other reason was I wanted the applicant to be aware of this and not be a surprise in the end. For example, the Home Depot had to do special fire protection measures in their store with larger quantities and sundries. In all fairness to the applicant I just wanted to make sure they knew what they were getting into. I knew they had a 12 inch water main at Trinity Street if they had to tap into that for fire suppression so that was not an issue but bringing that in is an additional cost. At the end of my report, I suggested approval is required from Newton Construction Official and Joe Inga falls under that.

Mr. Tharp stated: As long as we got their blessing on it and have a final document.

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Mr. Simmons stated: I agree.

Mr. Hardmeyer asked: What are you planning on doing about signage?

Mr. Daley stated: It will be a smaller version of what we currently have. It will mostly red and white with a little bit of blue.

Mr. Marion asked: Will the sign be level with the Dance studio sign.

Mr. Daley stated: It will be over the door. It will be 1 x 6.

Mr. Marion asked: What material will the sign be made of?

Mr. Daley stated: It is a Lucite and generally they are back lit.

Mr. Marion asked: Can you get just wood or does Benjamin Moore have regulations on their signage.

Mr. Daley stated: They need to be uniform all over the county. There might be other options. We are considered a signature store. Their name is in big letters and our name is in small letters. Traditionally their signs all look the same.

Mr. Marion asked Mr. McCabe: Is this in the Historic district?

Mr. McCabe stated: It is outside the district.

Mr. Marion stated: I think most of the signs on the street are wood with the light shining on to it.

Mr. McCabe stated: Where the pent roof comes out there are lights built into it. What he could do is have it mounted flat to the wall and the lights from the top will light it up. So instead of wood it could be pre printed on the 1 x 6 and then flat mounted with no back light.

Mr. Marion opened up this portion of the meeting to the public. With no public stepping forward, Mr. Marion closed this portion of the meeting.

Mr. Soloway stated: The applicant has addressed the variances but didn't really address the improvements. I am not sure if the sign conforms.

Mr. McCabe stated: The sign that is on the plan was taken directly from the paint manufacture. It is sized based on what is available and also what the manufacture can make.

Mr. Soloway asked: Do you know if this sign complies with the ordinance.

Mr. McCabe stated: It does not because that is why it is part of the use variance because in the C1 zone you are not permitted to have sign for commercial retail.

Mr. Soloway asked: If was a permitted sign would it apply with the ordinance?

Mr. McCabe stated: Yes it would. It is well within the size permitted for commercial retail.

Mr. Marion asked: If you are approved for this the work you want to do to the door and the window will require you to come back.

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Mr. Daley stated: Yes. That is what Mr. Utter said.

Mr. Marion asked: Does this have to come before the Board.

Mr. Soloway stated: I don't think it has to come before the Board for the door and windows.

Mr. Hardmeyer asked: Does Benjamin Moore dictate certain requirements for how the building should look?

Mr. Daley stated: Yes they do. In terms of the exterior, other than the color of the sign and the size, I don't think they mandate the color of the building.

Mr. Hardmeyer asked: As a business person you would want the window for aesthetics to brighten the place up and attract more business.

Mr. Daley stated: Absolutely.

Ms. Pfister asked: Mr. Daley, is it your intent that you will be painting the entire exterior of the building?

Mr. Daley stated: Yes.

Ms. Pfister asked: How soon will you be doing that?

Mr. Daley stated: I would like to do it before we move in.

Ms. Pfister presented **Exhibit A-1, front of the building, dated May 18, 2011**. Can you explain exactly what you are planning on doing?

Mr. Daley stated: Explained what he is proposing to do with the front of the building with regards to Exhibit A-1.

Discussion ensued on the paint colors that would be chosen for the building.

Mr. Marion asked: Besides the Benjamin Moore sign will you have any other signs?

Mr. Daley stated: We currently have a fluorescent sign for "Open" and a mural of paint can in the window.

Mr. Flynn stated: That will increase your signage. If you are going to put a picture of a paint can in the window that would be a sign.

Mr. Marion stated: That would also reduce your light.
Discussion ensued on the signage.

Ms. Pfister presented **Exhibit A-3, back side of the building, dated May 18, 2011**. Is it your intent that you will be putting a new paint job on the beige color as it is right now?

Ms. Pfister asked: Will you be replacing the plywood that is above the door?

Mr. Daley stated: Yes.

Ms. Pfister asked: Will you be cleaning up the cement steps by pressure washing them?

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Mr. Daley stated: Yes.

Mr. Daley went on to explain the exterior improvements of the building.

Ms. Pfister presented the photos to Mr. Tharp to show him exactly what is being fixed up.

Mr. Hardmeyer stated: I am in favor of allowing the variance but I am feeling very uneasy about approving. These improvements seem very loose. There is not a definite plan as to what is being done with the improvements.

Mr. McCabe stated: On the Union Place side of the building and on the rear of the building where it is a beige color it will be repainted in earth tone colors. The top and bottom handrail system for the stairway up to the rear entry has a railing with spindles with be painted a trim color to match the body of the building. The same thing will apply for the lattice work underneath. The masonry stairs will be the same body color as the building. Doors and windows will be painted the trim color. This applies to Trinity and the rear of the building. The pent roof over the two rear ground entrances will be maintained and painted. The small corridor over the double door rear entrance will cover the plywood and painted the body color. On the front, the brick will stay for now. The existing entry door will be replaced with a full view glass door with a metal frame. The two small upper windows to the right side of the door will be removed and a new plate glass window will be installed to match the same size and type of window as the D'Marge Dance studio. It will provide an architectural continuity to the entrance. It will have the same trim and window setting as the dance studio. The sign will be put between the top of the window of the door and the underside of the front pent roof and it will be size and design as it is shown on the plan. It will be lit by the current high hats with no internal illumination.

Mr. Tharp stated: It should read it includes but not limited to because as you start power washing, you might find things that needs to be repaired.

Mr. McCabe stated: Any holes on the sidewalls will be patched prior to the paint job.

Mr. Marion opened this portion up to the public. With no one stepping forward, this portion of the meeting is closed to the public.

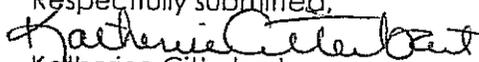
Mr. Soloway stated: In addition to what Mr. McCabe stated it is subject to purchasing two annual parking passes which also lies in to no employee parking on the site.

Mr. Flaherty made a motion to approve the application as presented. Mr. Flynn seconded the motion.

AYE: Mr. Russo, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Flynn, Mr. Caffrey, Mr. Hardmeyer

ADJOURNMENT

Mr. Tharp made a motion to adjourn the meeting. Mr. Caffrey seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 9:39 PM. The next regular scheduled meeting will be held on June 15, 2011 at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbari
Planning Board Secretary

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EXHIBITS

Alex Cable

Exhibit A-1, colorized version of the variance plan that has been submitted to the Board dated, May 5, 2011.

Exhibit A-2, Photo Exhibit (Photo A and B) of the properties in questions.

John Daly

Exhibit A-1, front of the building, dated May 18, 2011.

Exhibit A-2, Adjacent building to the subject property, dated May 18, 2011.

Exhibit A-3, Rear of the subject property, dated May 18, 2011